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## Judiciary Committee

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### HB 2510

**Title:** An act relating to limiting government liability during preshelter care investigations of child abuse or neglect.

**Brief Description:** Limiting government liability during preshelter care investigations of child abuse or neglect.

**Sponsors:** Representatives Kagi, Walsh, Pedersen, Orwall, Jinkins, Dickerson, Ryu, Van De Wege, Darneille and Roberts.

#### Brief Summary of Bill

- Amends the purpose section of the statute governing child abuse and neglect to provide that the child's interests and safety are the paramount concern when the interests of the parent and child conflict.
- Addresses the liability of governmental entities for acts or omissions in conducting emergent placement investigations of child abuse or neglect.
- Provides that the state is not liable for actions taken to comply with court orders and that child abuse investigators are entitled to the same witness immunity as other witnesses.

**Hearing Date:** 1/25/12

**Staff:** Edie Adams (786-7180).

#### Background:

Under the state's child abuse statutes, the Department of Social and Health Services (department) is responsible for investigating and responding to allegations of child abuse or neglect. In some cases of alleged abuse or neglect, a child may be immediately removed from his or her parent or guardian and taken into protective custody.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

A court can order law enforcement or Child Protective Services to take a child into custody where the child's health, safety, and welfare will be seriously endangered if the child is not taken into custody. A child may be taken into custody without a court order where law enforcement has probable cause to believe that the child is abused or neglected and the child would be injured or could not be taken into custody if it were necessary to first obtain a court order. A child can also be detained and taken into custody without a court order where a hospital administrator has reasonable cause to believe that allowing the child to return home would present an imminent danger to the child's safety.

A shelter care hearing must be held within 72 hours of a child being taken into custody and placed under state care, excluding Saturdays, Sundays, and holidays. At the shelter care hearing, the court will determine whether the child can safely be returned home while the dependency is being adjudicated, or whether there is further need for an out-of-home placement of the child.

Washington courts have interpreted the child abuse investigation statute as creating an implied right of action for negligent investigation. In the case *Tyner v. DSHS*, the Washington Supreme Court found that the child abuse investigation statute creates a duty not only to the child who is potentially abused or neglected, but also to the parents of the child, even if a parent is suspected of the abuse. The court based this holding in part on legislative intent statements in the child abuse statutes describing the importance of the family unit and the parent-child bond.

There are three types of negligent investigation claims recognized by the courts: (1) wrongful removal of a child from a non-abusive home; (2) placement of a child in an abusive home; and (3) failure to remove a child from an abusive home.

Witness immunity is a common law doctrine that provides witnesses in judicial proceedings immunity from suit based on their testimony. The purpose of witness immunity is to preserve the integrity of the judicial process by encouraging full and frank disclosure of all pertinent information within the witness's knowledge. The rule is based on the safeguards in judicial proceedings that help to ensure reliable testimony, such as: the witness's oath, the hazards of cross examination, and the threat of prosecution for perjury.

### **Summary of Bill:**

The purpose section of the child abuse statute is amended to state that a child's interests of basic nurture, physical and mental health, and safety should prevail over conflicting interests of a parent and that the safety of the child is the department's paramount concern when determining whether a parent and child should be separated during or immediately following investigation of alleged abuse or neglect.

Governmental entities, and their officers, agents, employees, and volunteers, are not liable for acts or omissions in emergent placement investigations of child abuse or neglect unless the investigation was done with gross negligence of whether there was reason to believe the child was in danger of abuse or neglect.

The department and its employees must comply with orders of the court, including shelter care and other dependency orders, and are not liable for acts performed to comply with such court

orders. In providing reports and recommendations to the court, caseworkers are entitled to the same witness immunity as would be provided to any other witness.

**Appropriation:** None.

**Fiscal Note:** Requested on January 17, 2012.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.